



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-2900 FAX (603) 271-2456



May 30, 2002

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Donald Gagne  
d/b/a Apex Roofing and Skylight Service  
737 South Street  
Milford, NH 03055

Re: Administrative Order No. WMD 02-14

Dear Mr. Gagne,

Enclosed is Administrative Order No. WMD 02-14 issued this date to you as a result of an inspection conducted on April 15, 2002.

Should you have any questions regarding this order, please contact George Carrigan or me at 271-3899.

Sincerely,

Kenneth W. Marschner, Administrator  
Waste Management Programs  
Department of Environmental Services

CERTIFIED MAIL/RRR: 7000 1670 0000 0584 4271

File/DB  
Gretchen Rule, DES Legal Unit  
Public Information Officer, DES PIC Office  
Jennifer Patterson, Sr. Assistant Attorney General  
Town of Brookline  
Edward Magee, Site Owner



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d/b/a Apex Roofing and Skylight Service  
737 South Street  
Milford, NH 03055

**ADMINISTRATIVE ORDER  
No. WMD 02-14**

**May 30, 2002**

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Donald Gagne d/b/a Apex Roofing and Skylight Service pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Donald Gagne is an individual doing business as Apex Roofing and Skylight Service ("Apex") and having a mailing address of 737 South Street, Milford, NH 03055.

**C. STATEMENTS OF FACTS AND LAW**

1. RSA 149-M authorizes DES to regulate the management of solid waste in the State of New Hampshire. RSA 149-M:7 authorizes the Commissioner of DES to adopt rules to implement solid waste management standards. Pursuant to this authority, the Commissioner has adopted Env-Wm 100-300 and Env-Wm 2100-3700 ("Solid Waste Rules").
2. Edward Magee is the owner of land located at 246 Route 13, Brookline, NH, more particularly described in a deed recorded in the Hillsborough County Registry of Deeds at Book 5818, Page 1391, and identified on Brookline Tax Map D Lot 3 (the "Site").
3. On March 18 and 19, 2002, DES personnel received two complaints alleging that computer monitors and other solid wastes were disposed of at the Site.
4. On April 15, 2002, DES personnel investigated the allegations of illegal disposal of solid waste at the Site.
5. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
6. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the

demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance.”

7. Env-Wm 102.42 defines “construction and demolition debris” in part, as “non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks.”

8. During the April 15 inspection, DES personnel observed waste, including paper, computer equipment, electronic equipment, small electric motors, and roofing shingles at the Site. Approximately 300 cubic yards of paper, roofing shingles were dumped in a fill area located behind the barn at the Site. The paper was disposed of over the embankment and covered with wood chips and old roofing shingles. There was a large quantity of paper and computer equipment directly next to the fill area. (See attached Site map.)

9. During the April 15 inspection, DES personnel met with Edward Magee, the owner of the Site. Mr. Magee informed DES personnel that Apex, a business owned by Donald Gagne, is renting space at the Site. Mr. Magee informed DES personnel that the roofing shingles observed at the Site were brought on Site by Apex.

10. On April 18, 2002, DES personnel met with Mr. Gagne to discuss his disposal of roofing material at the Site. Mr. Gagne confirmed that he had disposed of roofing material at the Site.

11. The roofing shingles, paper, small electric motors, and electronic equipment observed by DES personnel at the Site are solid wastes as defined by RSA 149-M:4, XXII.

12. RSA 149-M:4, IX defines a “[solid waste] facility” as “a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste.”

13. The Site constitutes a “solid waste facility” as defined by RSA 149-M:4, IX.

14. RSA 149-M:9, I states that “No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES].”

15. A review of DES files show that Edward Magee, the Site owner, has not applied for or holds a permit to operate a solid waste facility at any New Hampshire location.

16. RSA 149-M:9, II states that “It shall be unlawful to transport solid waste to, or dispose of solid waste at, any facility other than an approved [solid waste] facility.”

17. Apex transported solid waste to and disposed of solid waste at an unpermitted solid waste facility.
18. Env-Wm 2601.07(b) requires that analytical testing procedures specified in 40 CFR 61 be used to determine whether a waste is an asbestos waste.
19. Apex has not determined if the roofing shingles identified in C.9 is an asbestos waste.

#### **D. DETERMINATION OF VIOLATIONS**

1. Apex has violated RSA 149-M:9, II by transporting solid waste to an unpermitted solid waste facility.
2. Apex has violated RSA 149-M:9, II by disposing of solid waste at an unpermitted solid waste facility.
3. Apex has violated Env-Wm 2601.07(b) by failing to determine whether a waste is an asbestos waste.

#### **E. ORDER**

Based on the above findings, DES hereby orders Apex as follows:

1. **Immediately** cease transporting solid waste to an unpermitted facility.
2. **Immediately** cease disposing of solid waste at an unpermitted facility.
3. **Within 30 days** of this Order, submit to DES for approval a Scope of Work for the removal of all solid waste at the Site and analysis of the roofing shingles at the Site for asbestos. Include as part of the Scope of Work a schedule which details when the work will be done. The complete removal of all solid waste at the Site must occur within 180 days of this Order. DES suggests that Apex coordinate efforts for clean-up of the Site with Edward Magee, the Site owner.
4. Upon DES approval of the Scope of Work and proposed schedule, implement the Scope of Work as approved and complete the removal of all solid waste at the Site to a facility or facilities permitted to accept such wastes in accordance with the approved schedule.
5. Submit one written status report to DES **within 7 calendar days** of completing the approved Scope of Work certifying that corrective measures have been implemented in accordance with the approved Scope of Work and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed, and **copies of disposal receipts**.

6. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

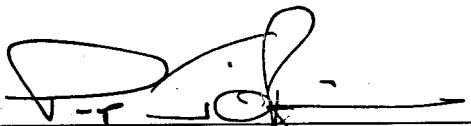
George Carrigan, Waste Management Specialist  
DES Waste Management Division  
6 Hazen Drive  
Concord, NH 03301  
Fax: (603) 271-2456  
e-mail: [gcarrigan@des.state.nh.us](mailto:gcarrigan@des.state.nh.us)

#### **F. APPEAL**

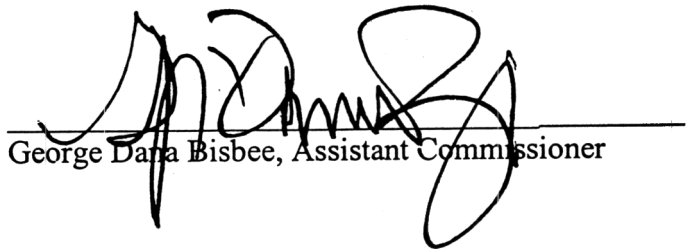
Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Apex of the obligation to comply with the Order.

#### **G. OTHER PROVISIONS**

Please note that RSA 149-M provides for civil and criminal penalties and administrative fines for violations of the statute or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 149-M:15 provides for civil forfeitures of up to \$25,000 for each day of a continuing violation, in addition to enforcement by injunctive relief. In the event that compliance is not achieved, DES may take further action against Apex, including referring the matter to the New Hampshire Department of Justice for imposition of civil or criminal penalties. DES reserves the right to pursue administrative penalties for the violations noted above.



Philip J. O'Brien, Ph.D., Director  
Waste Management Division



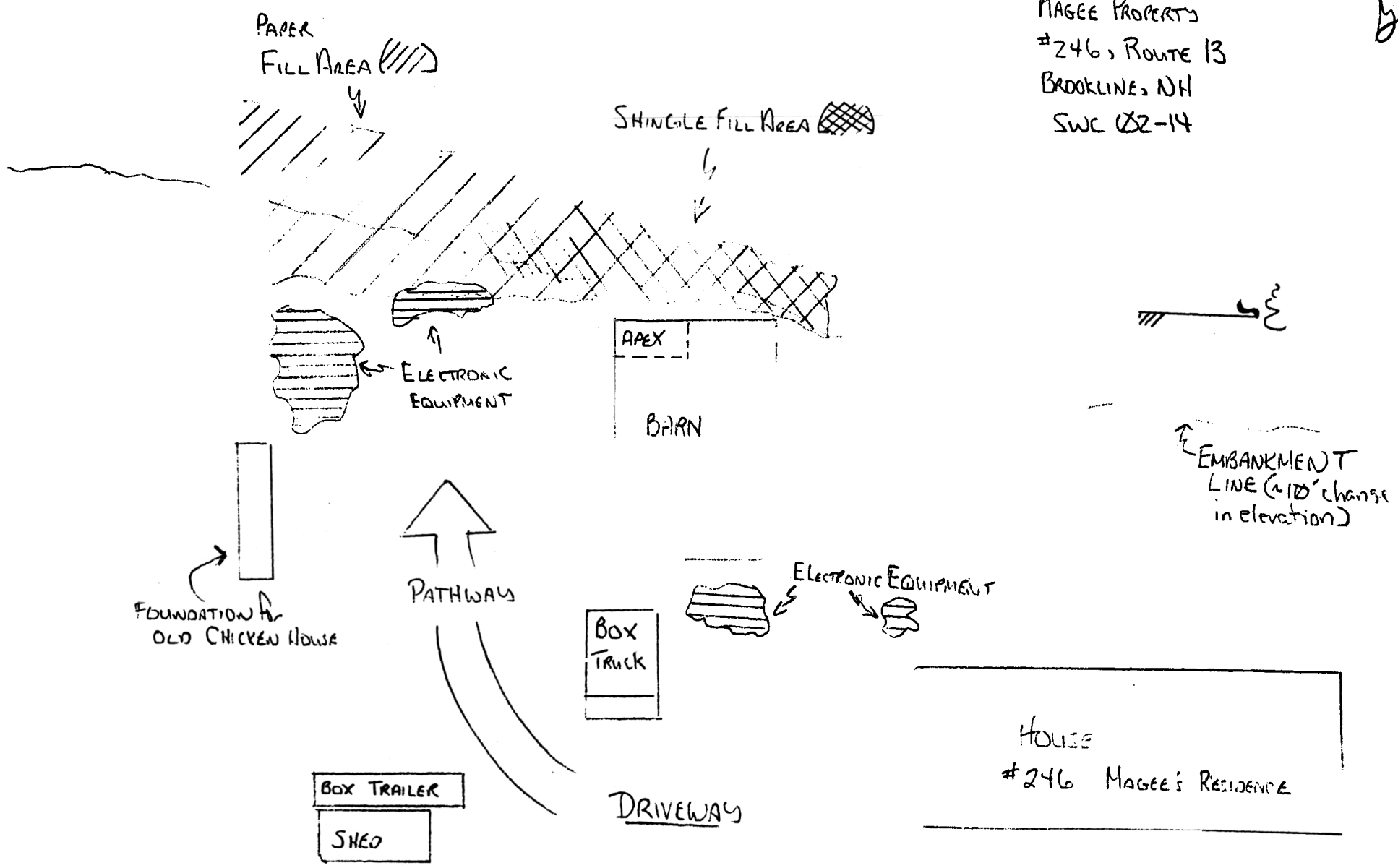
George Dana Bisbee, Assistant Commissioner

Certified Mail/RRR: 7000 1670 0000 0584 4271

cc: File/DB  
Gretchen Rule, DES Legal Unit  
Public Information Officer, DES PIC Office  
Jennifer Patterson, Sr. Assistant Attorney General  
Town of Brookline  
Edward Magee, Site owner

Sheet 02  
B

MAGEE PROPERTY  
#246, Route 13  
BROOKLINE, NH  
SWC 082-14



Note: Not to scale!

ROUTE 13